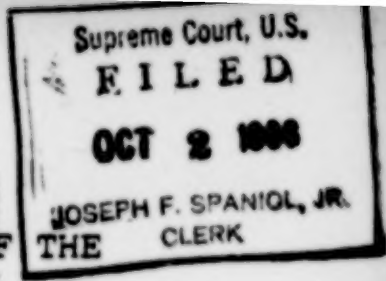


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NO. 86-381

IN THE SUPREME COURT OF
UNITED STATES



PEOPLE OF THE STATE OF CALIFORNIA
Petitioner

v.

SUPERIOR COURT OF THE STATE OF
CALIFORNIA, FOR THE COUNTY OF
OF SAN BERNARDINO,
Respondent

RICHARD SMOLIN and GERARD SMOLIN,
Real Parties In Interest

ON PETITION FOR WRIT OF
CERTIORARI TO THE SUPREME
COURT OF THE STATE OF CALIFORNIA

BRIEF OF THE AMICI CURIAE
STATES OF ALASKA, HAWAII, IDAHO,
INDIANA, KANSAS, KENTUCKY, LOUISIANA
MAINE, MONTANA, NEVADA, NEW HAMPSHIRE
OKLAHOMA, PENNSYLVANIA, PUERTO RICO,
SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH
VIRGIN ISLANDS, WYOMING

IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI

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BRIEF OF AMICI CURIAE
IN SUPPORT OF PETITIONER

INTEREST OF AMICI

The amici curiae are states who have an interest in the just and expeditious execution of the constitutional and statutory provisions for the extradition of fugitives from justice. The resolution of the question presented by this appeal will

significantly affect amici states and their ability to insure the fair, prompt, and efficient exercise of their criminal laws.

The amici submit this brief through their Attorneys General pursuant to Sup. Ct. R. 36.4. This brief is presented in support of the Petitioner People of the State of California.

SUMMARY OF ARGUMENT

The respondent-court and the Supreme Court of California have decided an important issue arising under Article IV, section 2, clause 2 of the United States Constitution in a way which seriously conflicts with this Court's decision in Michigan v. Doran, 439 U.S. 282 (1978), and previous cases interpreting that constitutional provision. It greatly expands the role of the courts of an asylum state in the context of extradition, and it does so by permitting an asylum state court to make an ultimate determination of fact concerning the guilt or innocence of an alleged fugitive. The decisions of the respondent-court and the Supreme Court of California allow a judicial officer in the asylum state to look to extrinsic evidence, outside the extradition documents, to determine whether an alleged fugitive could be

found guilty of the crime charged in the demanding state. By so ruling, the respondent-court and the Supreme Court of California have usurped for the Judiciary a role that does not properly belong to it in extradition.

The decisions of the respondent-court and the Supreme Court of California will create a dangerous precedent if allowed to stand. The decisions below undermine and frustrate the important concepts of comity and full faith and credit articulated in the Extradition Clause and create the danger of "balkanizing" the administration of justice among the several states, the very evil which the Extradition Clause was designed to prevent.

The decision of the Supreme Court of California should be reversed because the rulings made by the courts below can only be properly made in the courts of the State of Louisiana.

REASONS FOR GRANTING THE WRIT

- I. THE DECISION OF THE CALIFORNIA SUPREME COURT IS IN DIRECT CONFLICT WITH THIS COURT'S RULING IN MICHIGAN V. DORAN, 439 U.S. 282 (1978).

In Michigan v. Doran, 439 U.S. 282 (1978), this Court analyzed the fundamental purposes underlying the Extradition Clause. This Court stated:

The Extradition Clause was intended to enable each state to bring offenders to trial as swiftly as possible in the state where the alleged offense was committed. The purpose of the Clause was to preclude any state from becoming a sanctuary for fugitives from justice of another state and thus 'balkanize' the administration of criminal justice among the several states. It articulated, in mandatory language, the concepts of comity and full faith and credit, found in the immediately preceding clause of Art. IV. The Extradition Clause, like the Commerce Clause, served important national objectives of a newly developing country striving to foster national unity. In the

administration of justice, no less than in trade and commerce, national unity was thought to be served by de-emphasizing state lines for certain purposes, without impinging on essential state autonomy.

Interstate extradition was intended to be a summary and mandatory executive proceeding derived from the language of Art. IV, § 2, cl. 2, of the constitution. The Clause never contemplated that the asylum state was to conduct the kind of preliminary inquiry traditionally intervening between the initial arrest and trial.

439 U.S. at 287-88, citing Biddinger v. Comm'r. of Police, 245 U.S. 128, 132-133, 38 S.Ct. 41, 42, 62 L.Ed. 193 (1917); Appleyard v. Massachusetts, 203 U.S. 222, 227, 27 S.Ct. 122, 123, 51 L.Ed. 161 (1906); In re Strauss, 197 U.S. 324, 332, 25 S.Ct. 535, 537, 49 L.Ed. 774 (1905).

Having recognized that interstate extradition is designed to be a summary and mandatory executive process, this Court in Michigan v. Doran clearly and explicitly

identified the four issues which a court in an asylum state could consider upon a challenge to extradition. The Court stated:

A Governor's grant of extradition is prima facie evidence that the constitutional and statutory requirements have been met. Once the Governor has granted extradition, a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. These are historic facts readily verifiable.

439 U.S. at 289, citing Bassing v. Cady,
208 U.S. 386, 392, 28 S.Ct. 392, 393, 52
L.Ed. 540 (1908).

With respect to the petition in the instant case, the only issue is whether the fugitives have been charged with a crime in

Louisiana. That issue "is a question of law and is always open upon the face of the papers to judicial inquiry on an application for a discharge under a writ of habeas corpus." Roberts v. Reilly, 116 U.S. 80, 95 (1885). The issue is not whether the fugitives can be found guilty of the crime charged, but only whether, under the law of the demanding state, they have been charged with an offense.

In this particular case, § 14:45(4) of the Louisiana Revised Statutes prohibits the "intentional taking . . . and removing from the state, by any parent of his or her child, from the custody of any person to whom custody has been awarded by any court of competent jurisdiction of any state, without the consent of the legal custodian, with intent to defeat the jurisdiction of the said court over the custody of the

child." The fugitives were, in fact, charged with this offense, and their extradition was sought on that basis. The respondent-court, as well as the Supreme Court of California, took judicial notice of a California custody decree issued out of the San Bernardino Superior Court, which granted custody of the children to their father, Richard Smolin. Having taken judicial notice of that custody order, the respondent-court held that the State of Louisiana court had failed to demonstrate that it had "any rights with respect to the extradition of defendant." People v. Superior Court, 41 Cal.3d at 764. Accordingly, the respondent-court granted the writ of habeas corpus and discharged the fugitives. On appeal, the Supreme Court of California recognized that although the

ruling of the respondent-court was ambiguous, it in fact had ruled that the fugitives had not been charged with a crime in the State of Louisiana because, on the basis of the California custody order, the defendants could not be found guilty of kidnapping under § 14:45(4) of the Louisiana Revised Statutes. The California Supreme Court then upheld that ruling on the purported ground that the defendants had not been substantially charged with a crime under the law of Louisiana.

The amici states agree with the State of California that the decision by the respondent-court and the California Supreme Court confuses the issue of whether the fugitives were charged with a crime under Louisiana law, with the question of whether they are innocent of those charges. It may be that the fugitives have

a strong and legitimate defense to the charges against them. That defense, however, cannot be litigated in the courts of California, but must be litigated, and can only be litigated in the courts of Louisiana. On the face of the documents submitted by the Governor of Louisiana upon the Governor of California, the fugitives were charged with a crime under the laws of the demanding state. Whether there is extrinsic evidence which might prove them innocent of those charges is irrelevant for purposes of extradition. The only issue which the respondent-court should have considered is whether the fugitives were charged with a crime under the laws of Louisiana, not whether they could be found guilty of those crimes when all the evidence is considered.

The decision of the respondent-court, as well as the Supreme Court of California on appeal, conflicts directly with this Court's decision in Michigan v. Doran, supra, which limited the role of an asylum state court in reviewing extradition. This Court in Michigan v. Doran and in earlier cases emphasized that the process of extradition "is but one step in securing the presence of the defendant in the court in which he may be tried, and in no manner determines the question of guilt." Michigan v. Doran, 439 U.S. at 288, quoting In re Strauss, 197 U.S. 324, 332-333 (1905). See also Drew v. Thaw, 235 U.S. 432, 439-40 (1914). In this particular case, the respondent-court, as well as the Supreme Court of California, abandoned its limited role and looked to extrinsic evidence to determine whether the fugitives

could be found guilty of the crimes with which they were charged in Louisiana, rather than determining simply that they had been charged with a crime under the law of Louisiana. In doing so, they exceeded their authority and intruded upon the legitimate right of the State of Louisiana to determine the guilt or innocence of the fugitives. Additionally, they intruded upon the authority of the executive branch of state government, which has been granted the constitutional authority and responsibility in the area of interstate extradition.

II. THE DECISION OF THE CALIFORNIA SUPREME COURT, IF ALLOWED TO STAND, MAY ADVERSELY AFFECT THE RECIPROCAL PROCESS OF EXTRADITION CONTEMPLATED BY ARTICLE IV, SECTION 2, CLAUSE 2 OF THE UNITED STATES CONSTITUTION.

It follows from what has already been said that the amici states believe that the decisions of the respondent-court and the Supreme Court of California below establish a dangerous precedent in the area of extradition law. The very concept of interstate extradition, as recognized by the fact that virtually every state in the Union has adopted the Uniform Criminal Extradition Act, is that extradition is designed to be a reciprocal, mutually cooperative and uniform process between the states. The ruling of the respondent-court, as upheld by the highest court of California, creates a dangerous situation by allowing the courts of an asylum state

to consider extrinsic evidence to determine whether a fugitive can be found guilty under the law of the demanding state in the guise of determining whether the fugitive is charged with a crime in that state.

Such a result creates the very evil which the Extradition Clause was designed to eliminate, namely, it would permit a state from becoming a sanctuary for fugitives from justice and would "balkanize" the administration of criminal justice among the several states. Michigan v. Doran, supra at 287-88. It undermines the very concepts of comity and full faith and credit and generates lack of respect that an asylum state must show to the judicial system of its sister state.

The fact that the decisions below come from the State of California is another significant reason for concern. As the

petitioner has pointed out, California is the nation's largest state and receives more extradition requests than any other. The potential impact of the decisions below, if allowed to stand, could be significant.

As this Court has stated, interstate extradition was intended to be both summary and mandatory. The decision below undermines both of those salutary purposes of extradition by injecting into the process the consideration of extrinsic evidence by a court which has absolutely no jurisdiction over the crimes charged. In essence, these rulings permit the very type of plenary review in the asylum state of issues which should be fully litigated in the demanding state, and thereby "defeat the plain purposes of the summary and

mandatory procedures authorized by Art. IV, § 2." Michigan v. Doran, supra at 290; Pacileo v. Walker, 449 U.S. 86, 88, 101 S.Ct. 308, 309, 66 L.Ed.2d 304 (1980), reh. denied, 450 U.S. 960 (1981).

The fugitives in this case have a right to a trial to determine their guilt or innocence of the crimes with which they stand charged in Louisiana. The State of Louisiana likewise has the right to have the guilt or innocence of the fugitives determined. Under the Extradition Clause of the United States Constitution, that determination must be made in the State of Louisiana. The trial courts of California have no role to play in making that determination, and it was error for the respondent-court to consider extrinsic evidence to determine that the fugitives could not be found guilty of the offenses

with which they now stand charged in Louisiana. That ruling, as upheld by the California Supreme Court, should be reversed.

CONCLUSION

The petition for a writ of certiorari should be granted, and upon review, amici states respectfully request that the judgment of the California Supreme Court be reversed.

Respectfully submitted,

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